

CHAPTER 53A

GUAM LEAD BAN ACT.

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SOURCE: This Chapter was enacted by P.L. 25-51:2.

§53300. Title. This Chapter shall be known as the *Guam Lead Ban Act*.

§53301. Definitions. For purposes of this Act, the following words and phrases shall have the meaning given herein, *unless* their use in the text of the Act clearly demonstrates a different meaning.

(1) *Administrator* shall mean the Administrator of the Guam Environmental Protection Agency ('GEPA'), or that person's designee.

(2) *Agency* shall mean the Guam Environmental Protection Agency ('GEPA').

(3) *ANSI/NSF Standard 61, §9* shall mean the testing protocol that measures and limits the amount of lead and other contaminants that a device may contribute to drinking water. This protocol was developed by NSF International and adopted by the American National Standards Institute.

(4) *Board* shall mean the Board of Directors of the Guam Environmental Protection Agency.

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(5) *Endpoint devices* shall mean plumbing fittings and fixtures intended to dispense water from the domestic water piping system for human ingestion. These devices include kitchen and bar faucets, lavatory faucets, water dispensers, drinking fountains, water coolers, glass fillers, residential refrigerator ice makers, supply stops and endpoint control valves.

(6) *Lead free* shall mean: (a) when used with respect to solders and flux, refers to solders and flux containing *not* more than 0.2 percent (.2%) lead; (b) when used with respect to pipes and pipe fittings, refers to pipes and pipe fittings containing *not* more than 8.0 percent (8%) lead; and (c) when used with respect to plumbing fittings and fixtures intended as endpoint devices, refers to plumbing fittings and fixtures that have been certified by an independent third party to be in compliance with ANSI/NSF Standard 61, §9.

(7) *Person* shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, or any agency, department or instrumentality of the Federal or local government, or any other legal representatives, agents or assigns.

(8) *Public water system*. ('PWS') shall mean a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, *if* such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities *not* under such control, which are used primarily in connection with such system.

(9) *Replacement* shall mean when used with respect to a potable water piping system, means the permanent removal of lead containing materials.

§53302. Prohibition on Use of Lead Pipes, Solder and Flux. (a) No person may use any pipe, plumbing fittings or fixtures, any solder, or any flux, which is *not* lead free as defined in this Act and any regulations promulgated hereunder, in the installation or repair of:

(i) any public water system; *or*

(ii) any plumbing in a residential or nonresidential facility providing water for human consumption.

(b) Subparagraph (a) shall *not* apply to leaded joints necessary for the repair of cast iron pipes.

§53303. Prohibition on the Importation, Use or Sale of Pipes, Plumbing Fittings and Fixtures. (a) No person may import into Guam or introduce into commerce any lead pipe, *except* for a pipe that is used in manufacturing or industrial processing;

(b) No person may import into Guam or introduce into commerce any plumbing fitting or fixture that is *not* ANSI/NSF certified.

(c) No person may introduce into commerce or sell any solder or flux that is *not* lead free, *unless* the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(d) GEPA shall coordinate enforcement of this Section with the Department of Customs and Quarantine.

§53304. Right of Entry and Inspection. The Administrator or his authorized representative may enter at all reasonable times upon private or public facilities for the purpose of inspecting and investigating compliance with this Act. GEPA is authorized to charge for conducting inspections to determine compliance with this Act and regulations promulgated hereunder at the rate to be

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comprised of the hourly rate of the engineer or environmental inspector, or both, plus an additional fifteen percent (15%) of that total rate for administrative costs. All fees collected under this Section shall be deposited into the Safe Drinking Water Fund as established under §53308 of this Act.

§53305. Building Permit. No building permit clearance will be granted, *unless* certification, in the form and language deemed adequate by GEPA, is provided by the applicant that only lead free materials will be used in the construction of potable water plumbing systems at dwellings, schools, public buildings, restaurants, commercial buildings, industrial buildings, places of assembly or water system components, which include distribution, treatment, storage and appurtenances.

§53306. Occupancy Permit. No building intended for use as a dwelling, school, public building, restaurant, commercial building, industrial building, place of assembly or any water system component, which includes distribution, treatment, storage and appurtenances shall receive an occupancy permit, *unless* it complies with the standards established by this Act for lead and/or copper levels in first draw samples from endline and endpoint devices. The specific procedure or protocol to be followed for testing the different categories of buildings is attached as **Exhibit A**. The levels of lead and/or copper in individual endpoint devices deemed acceptable to issue an occupancy certificate is included in **Exhibit A**.

§53307. Enforcement and Penalties.

(a) Administrative. Whenever, on the basis of any information available, the Administrator finds that any person has violated the provisions of this Act, or rules and regulations, or a lawful order, or has violated any permit condition or limitation, the Administrator may assess an administrative penalty of *not* more than Five Thousand Five Hundred Dollars (\$5,500.00) per day per violation.

The assessment of an administrative penalty shall *not* prohibit the administrator from also ordering the mitigation and/or replacement of lead containing material, or for the

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taking of such other corrective action as may be appropriate. The administrator is authorized to issue stop work orders to enforce this Section.

(1) Before issuing an order assessing a civil penalty, the Administrator shall give to the person to be assessed such penalty, written notice of the Administrator's proposal to issue such order and the opportunity to request a hearing. Such request must be made within thirty (30) days of receipt of the notice. Hearings will be conducted as provided under the Administrative Adjudication Law ('AAL').

In lieu of an order, the Agency may require that the alleged violator or violators appear before the Agency for a hearing at a time and place specified in the notice, and answer the charges complained of, or the Agency may initiate civil or criminal action.

(i) *If*, after a hearing held pursuant to the AAL, the Board finds that a violation or violations have occurred, the Board shall affirm or modify the order previously issued, or issue an appropriate order or orders for the mitigation and/or replacement of lead containing material involved, or for the taking of such other corrective action as may be appropriate.

(ii) *If*, after hearing on an order contained in a notice, the Board finds that no violation has occurred or is occurring, the Board shall rescind the order.

(iii) Any order issued as part of a notice, or after hearing, may prescribe the date or dates by which the violation or violations shall cease, and may prescribe timetables for the necessary action in mitigating and/or replacing the lead containing material.

(2) In determining the amount of any penalty assessed, the Administrator shall take into

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account the nature, circumstances, extent and gravity of the violation or violations and with respect to the violator; ability to pay; any prior history of such violations; the degree of culpability, economic benefit or savings realized by the violator from the violation; and such other matters as justice may require.

(3) *If* any person fails to pay an assessment of a civil penalty after the order making the assessment has become final, or after a court in an action has entered a final judgment in favor of the Administrator, the Administrator shall request the Attorney General to bring a civil action to recover the amount assessed. In such an action, the validity, amount and appropriateness of such penalty shall *not* be subject to review.

(b) Civil. Any person who violates any provision of this Act, regulations or requirement of an applicable safe drinking water program or an order requiring compliance shall be subject to a civil penalty of *not* more than Twenty-seven Thousand Five Hundred Dollars (\$27,500.00) for each day per violation. Assessment of an administrative penalty order shall *not* be a bar to enforcement of these regulations and orders made pursuant to these regulations, by injunction or other appropriate remedy, and the Agency shall have the power to institute and maintain in the name of Guam any and all such enforcement proceedings.

(c) Each day of violation shall constitute a separate offense.

(d) Nothing in the Act shall prevent the Agency from making efforts to obtain voluntary compliance through warning conference, or any other appropriate means.

§53308. Safe Drinking Water Fund. There is hereby created within the government of Guam a non-lapsing, revolving fund, to be known as the '*Safe Drinking Water Fund*,' which shall be maintained separate and apart from any other funds of the government of Guam and shall be administered by the Administrator of GEPA. All fees,

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monetary charges and other funds collected or received pursuant to this Act shall be deposited in the Safe Drinking Water Fund, and used for the administration and implementation of the Safe Drinking Water Program; for public education and similar outreach programs; and promotions aimed at increasing awareness of the dangers of using pipes, plumbing fittings or fixtures containing lead over the acceptable limit set by this Act or regulations.

EXHIBIT A.

Procedures for Implementation of Lead Ban Related to Attaining Building Occupancy Permits Clearance.

Required testing procedure for endpoint device first draw sampling for lead and/or copper for dwellings, schools, public buildings, commercial buildings, industrial buildings or places of assembly. This testing procedure applies to newly constructed facilities, as well as additions and renovations of these same facilities.

Number of Samples Collected.

All new buildings, additions and renovations, *prior to* receiving occupancy permits, shall have a representative sample of (first draw water) collected from endpoint devices, as defined in the Guam Lead Ban Act, tested for levels of lead and/or copper. The number of endpoint devices to be tested shall be as follows:

Buildings with less than five (5) endpoint fitting/fixture devices - all devices shall be tested.

Buildings with five (5) or more endpoint fitting/fixture devices - five (5) devices plus ten percent (10%) of the total numbers of endpoint fitting/fixtures shall be tested; *however*, no building shall have less than five (5) endpoint devices tested. Endpoint devices used primarily for drinking water supply and cooking, i.e., water fountains, coolers, kitchen faucets, shall be selected as first priority - other devices, bathroom faucets, etc., shall be selected as second priority.

In the case of new, as well as additions and renovations of daycare centers, schools and health care facilities - all endpoint devices in the facility shall be tested.

Sampling Protocol - First Draw Samples.

All samples collected for determining materials in fittings shall be first draw samples, i.e., water which has been allowed to sit in the pipes and endpoint devices for at

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least six (6), but *not* more than twenty-four (24) hours, without use of the water in the facility.

All other required samples will be determined by GEPA.

Certified Laboratories.

For the purpose of determining compliance with the above mentioned water analysis, samples may be considered *only if* they have been analyzed by a laboratory certified by Guam EPA, or any other laboratory certified by other States acceptable to Guam's EPA.

Issuance or Denial of Occupancy Permits.

If all results are less than fifteen (15) parts per billion ("ppb"), then an occupancy permit clearance may be issued.

If any results are greater than fifty (50) ppb, then those fixtures must be replaced, and the replacement fixtures re-tested *prior to* issuance of occupancy permit.

If any results are between fifteen (15) ppb and fifty (50) ppb, the facility shall have three (3) options:

Option 1. Replace all fixtures, and/or pipes and fittings, *if* appropriate, with results between fifteen to fifty (15-50) ppb, and re-tested. An occupancy permit clearance may be issued *if* the analytical test results of water samples collected are less than fifteen (15) ppb.

Option 2. Mitigate all fixtures and/or pipes and fittings and re-tested. An occupancy permit clearance may be issued *if* the analytical test results of water samples collected are less than fifteen (15) ppb.

Option 3. Keep fixtures with results between fifteen to fifty (15-50) ppb, and post notices, as required below, adjacent to the fittings and fixtures. Retest after three (3) months to determine *if* levels have decreased.

In the case of day care centers, schools or health care facilities, all endpoint devices located in areas which may be

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used by children or infants, such as water coolers, kitchen faucets, with a result greater than fifteen (15) ppb shall be replaced. No devices producing water greater than fifteen (15) ppb shall be allowed to be used by children.

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Public Notice Requirements.

The contents of the notice shall provide a clear and readily understandable explanation of:

- (1) the potential sources of lead in the drinking water;
- (2) the potential adverse health effects;
- (3) the reasonably available methods of mitigating known or potential lead content in drinking water;
- (4) any steps the system is taking to mitigate lead content in drinking waters, *and*
- (5) the necessity for seeking alternative water supplies, *if any*.